



**MISSOURI DEPARTMENT OF TRANSPORTATION  
 BID GUIDELINES AND DOCUMENTATION  
 FOR PURCHASES \$25,000.00 AND OVER**

**REQUEST FOR BID**

It is the vendor's responsibility to read and comply with all conditions, specifications, and instructions outlined in this document. This document and any subsequent attachments shall supersede all confirmation forms, receipts, or any other paperwork needed to secure materials, equipment, or services.

TODAY'S DATE: JANUARY 14, 2010	<b>BID DUE BY (DATE AND TIME):</b> FEBRUARY 1, 2010 @ 1:00 PM CENTRAL TIME	F.O.B. REQUIREMENTS: DESTINATION (SEE DELIVERY LOCATION BELOW)
TO BE DELIVERED BY:  MAY 3, 2010	<b>Bid # D210-047-RN</b>  THIS BID # SHOULD BE REFERENCED ON ALL MAILING LABELS, ENVELOPES, AND ANY OTHER CORRESPONDENCE.	BUYER NAME: JENNIFER WEYDERT, CPPB GENERAL SERVICES SPECIALIST PHONE NUMBER: 660-385-8243 <b>NO RESPONSES ACCEPTED BY FAX</b>
District Mailing Address: Missouri Department of Transportation – District 2 General Services (Procurement) Division 902 North Missouri Street P.O. Box 8 Macon, MO. 63552		Delivery Location: Missouri Department of Transportation – District 5 Columbia Maintenance Building 4201 Paris Road Columbia, MO 65202

**VENDOR NAME:**

(Please enter your company name in this block)

**Provide pricing on a Mobile (Wheeled) Excavator, without operator, meeting the requirements of the enclosed specification D210-I70EXCAV for each of the following options, which your company may be interested in submitting a bid on** (due to space limitations, please print or type all information clearly, MoDOT will evaluate all options to make the best award decision):

Multi-Year Seasonal Lease: Beginning with a six (6) month lease (May 1, 2010 through October 31, 2010), with the right to extend for one additional month (November) at the monthly rate. If unit is needed during the remaining six (6) months (December 1<sup>st</sup> through April 30<sup>st</sup>) MoDOT reserves the right to lease the unit on as-needed basis at the quoted hourly rate. \* This lease would be extendable for up to five (5) years (in one-year increments) with monthly leases beginning May 1<sup>st</sup> of each year and all other dates/terms/rates remaining the same, provided all parties are in agreement (please submit your bid price accordingly).

Option A New Unit 2007 or newer model year (with less than 100 hours)			Option B Used Unit 2007 or newer model year (with no more than 1500 hours)		
Monthly Rate	Unit Information	Hourly Rate	Monthly Rate	Unit Information	Hourly Rate
\$	_____ Make	\$	\$	_____ Make	\$
	_____ Model			_____ Model	
	_____ Year			_____ Year	
	_____ Hours			_____ Hours	

## BASE LEASE REQUIREMENTS

### 1.0 BASE LEASE

MoDOT will accept bids on used or NEW units. The unit delivered must be completely covered by a manufacturer's or lessor's warranty, which includes replacement/repair parts, labor and transportation costs for the entire length of the lease period. The complete unit must be manufactured in accordance with the latest adopted OSHA or SAE Standards and amendments thereto. Parts and service availability **MUST** be within 24-48 hours of contact.

### 2.0 DELIVERY & INSPECTION

Bid prices for all options shall include delivery costs by the lessor to the Columbia Maintenance building located at 4201 Paris Road, Columbia, MO 65202. Delivery will be by appointment only to allow the MoDOT Area Mechanic or his representative to do a complete inspection of the unit, including service records, at which time; photos will be taken to document the condition of the machine. The service records **MUST** show a full service period with the machine ready to go. (For example, if the vendor/manufacturer requires 250 hour service periods, the unit must be ready to run for the full 250 hours before service of the unit is required.) An official representative of the successful bidding company shall be present to participate in the inspection. If a unit has not been provided by the delivery deadline, the compensation due the lessor will be reduced at a rate of \$600.00 per day for all working days a unit is not available during the lease period (which begins May 1). If this exceeds 10 working days, MoDOT reserves the right to obtain another unit from the next lowest bidder (or) other resources. At the end of the lease period when the unit is to be picked up, no unit will be released to a freight hauling company, unless the successful bidding company representative has properly inspected the unit in the presence of a MoDOT Area Mechanic or his representative. All costs associated with delivery and pickup of leased unit is the responsibility of the lessor and should be listed above in the pricing categories.

### 3.0 MAINTENANCE AND REPAIR

The department will furnish fuel, grease lubricant of chassis, and normal maintenance cleaning. The lessor will be responsible for all scheduled oil changes and periodic services required by manufacturer or lessor. The lessor shall furnish all necessary lubricants, replacement filters (oil, fuel, air filters, etc.), replacement/repair parts, labor and transportation. The lessor will supply MoDOT with the manufacturers and/or lessor's scheduled hourly maintenance chart(s), which MoDOT will use as a guide to contact lessor when unit needs serviced.

### 4.0 DOWNTIME

Daily availability of this unit is **critical** to MoDOT's project schedule. If the unit is unavailable for use for **more than 48-hours**, at any time, **the lessor must substitute a loan unit of mutually agreed upon type** to reduce any downtime that might keep MoDOT crew's from finishing their projects on time. The substitute unit must be provided within 3 days after the initial 2 days of downtime has accrued, unless a MoDOT representative agrees to a more flexible arrangement offered by the lessor. If after this time a substitute unit has not been provided or the original unit has not been repaired, the compensation due the lessor will be reduced at a rate of \$600.00 per day for all working days a unit is not available during the lease period, including the initial downtime. If this exceeds 10 working days, MoDOT reserves the right to obtain another unit from the next lowest bidder or other resources. If such a unit is obtained, MoDOT reserves the right to terminate the original lease from the first vendor, and will continue with the second vendor for the duration of the original lease period. All costs associated with delivery and pickup of leased units is the responsibility of the lessor.

### 5.0 VEHICLE DAMAGE

The department will be responsible for abuse or damage to the unit beyond normal expected wear and tear for highway maintenance operations. The maximum damage claim will be established at 75% of the manufacturers suggested retail price. A copy of the manufacturers suggested retail price is to be provided at the time of delivery and retained as part of the contract.

### 6.0 ADJUSTMENTS FOR CALENDAR START DATES

When any of the above dates falls on a Saturday, the start date will begin on the preceding Friday. When any of the above dates falls on a Sunday, the start date will begin on the following Monday.

# EXCAVATOR SPECIFICATIONS

D210-I70EXCAV  
January 2010

## 1.0 GENERAL

The intent of this specification is to secure and set forth the minimum requirements for a used or New current factory production model self-propelled, one operator, one engine, multipurpose rubber wheeled hydraulic excavator designed to provide precise operator control for excavating, trenching, ditch cleaning, bank sloping, custom grading, breaking and tamping. Any deviations from these specifications must be detailed in writing and submitted with bids. Complete machine must be manufactured in accordance with latest adopted OSHA or SAE Standards and amendments. MoDOT reserves the right to waive technicalities, and to reject any or all bids, and no bid is final until formally accepted by the District.

## 2.0 CAB

All steel, SAE ROPS fully enclosed with full height doors, sliding side and rear windows, shatter resistant, safety glass all around providing unrestricted operator visibility. Cab to have heat, defrosters and air conditioning. Seat will be fully adjustable suspension type with foam padded cushion and backrest. Appropriate restraints shall be provided with the seat/cab assembly. All controls for both upper and lower operation will be inside the cab providing ease of access for the operator. All instruments will be mounted to a panel[s] inside the cab or on the carrier and be readily visible to the operator. Unit shall have two [2] cab mounted front facing work lights and one cab mounted safety strobe light with 360-degree visibility. Rotation of cab shall be capable of complete 360-degree operability.

## 3.0 CONTROLS

MoDOT does need the Wrist-O-Twist® feature. Any questions pertaining to the control features, please call Ken Strube at (573) 882-0671 (office) or (573) 864-4991 (cellular).

**4.0 STEERING CONTROL** - provided thru rocker pedals with optional control thru hand levers.

## 5.0 ENGINE

Diesel powered, Turbocharged, minimum of four (4) cylinders with a **minimum 150 horsepower** at the flywheel under standard conditions, and not more than 182 horsepower to facilitate transportation to and from the project site. Engine equipment will include air cleaner, oil filter, fan, water pump, oil pump, fuel injection system, and engine protection system.

## 6.0 ELECTRICAL SYSTEM

Will be 24 volt with starter, alternator and battery [or batteries] as required for operation.

## 7.0 ROAD TRAVEL

Maximum width for transport needs to be 9 foot or less. Maximum height for transport needs to be 11 foot, 3 inches or less.

## 8.0 TIRES, WHEELS & HIGHWAY TRAVEL

Must be a rubber-tired unit. Dual-wheeled units will be accepted (10.00-20). The unit shall have a minimum highway travel (road speed) of 18 miles per hour.

## 9.0 BOOM AND BUCKET (S)

Unit must be equipped with a 60" grade sloping and contouring smooth lip bucket (ditching bucket) with heavy duty auxiliary cutting edge. Unit shall be equipped with an articulating boom that swings or rotates with the cab. It shall have a minimum of reach of 28 feet and maximum of 35 feet at ground level front and a minimum digging depth of 18 feet flat bottom. Stick shall be at least 9' 7" long. Any variations outside of these specifications list below:

Reach \_\_\_\_\_ Digging Depth \_\_\_\_\_ Boom Length \_\_\_\_\_ Arm Length \_\_\_\_\_

## 10.0 OUTRIGGERS

Unit must be equipped with 4 outriggers.

## 11.0 ALARM SYSTEM

Horn shall be in accordance with any OSHA standards that apply & shall be distinguishable from surrounding noise.

## 12.0 FUEL

Unit shall be delivered with a full tank of fuel. MoDOT will be responsible for returning unit with a full tank of fuel.

## **SPECIAL TERMS AND CONDITIONS**

### **Certificate of Good Standing**

The Bidder must be in compliance with the laws regarding conducting business in the State of Missouri. Within ten (10) business days of notification, the Bidder will need to provide a copy of his/her Missouri Secretary of State's "Certificate of Good Standing" prior to the issuance of any contract or initial purchase order by the Missouri Department of Transportation (MoDOT). MoDOT reserves the right, at its sole discretion, to extend the date this documentation must be provided. The Bidder's inability to provide this documentation will result in his/her bid being rejected.

### **RsMO 34.040.6 Compliance**

The Bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The Bidder should ensure they are in good standing with the Missouri Department of Revenue. Prior to award MoDOT staff will check with the Missouri Department of Revenue to ensure compliance with the provisions of RsMO 34.040.6. If necessary a "Certificate of No Tax Due" may be requested of the successful Bidder. If such a certificate is requested, the Bidder's inability to provide this documentation will result in his/her bid being rejected.

### **Required Specifications**

All equipment, and/or services bid upon must comply with the attached MoDOT Specification # **D210-I70EXCAV** and any other provisions outlined in the solicitation documents.

### **Information and Reports**

The Contractor shall provide all information and reports required by the Regulations, or Directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Missouri Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or Directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Missouri Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

### **Award**

Award of this quote will be made on an "All Or Nothing" basis using the "lowest and best" principle of award.

### **Holidays**

The following days shall be construed as official holidays under the terms of the contract:

January 1	New Year's Day
Third Monday in January	Martin Luther King, Jr.'s Birthday
February 12	Lincoln's Birthday
Third Monday in February	Washington's Birthday
May 8	Truman's Birthday
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
Second Monday in October	Columbus Day
November 11	Veteran's Day
Fourth Thursday in November	Thanksgiving Day
December 25	Christmas Day

When any of the above holidays falls on a Sunday, the holiday will be observed on the following Monday; when any of the above holidays falls on a Saturday, the holiday will be observed on the immediately preceding Friday.

During construction/maintenance seasons, many maintenance buildings work 4-10 shifts and deliveries cannot be made on the "off" days for those buildings. Specific shift information for the applicable delivery locations will be provided to the awarded vendor when the purchase orders are issued.

## MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

The bidder's attention is directed to the Missouri Domestic Products Procurement Act, Sections 34.350 to 34.359, RsMO, which requires all manufactured goods or commodities used or supplied in the performance of this contract or any subcontract to be manufactured or produced in the United States.

Section 34.355, RsMO, requires the vendor or contractor to certify his compliance with Section 34.353 and, if applicable, Section 34.359, RsMO, at the time of bidding **and** prior to payment. Failure to comply with Section 34.353, RsMO, during the performance of the contract **and** to provide certification of compliance prior to payment will result in nonpayment for those goods or commodities.

Section 34.353.2, RsMO, specifies that it does not apply where the total contract is less than Twenty-Five Thousand Dollars (\$25,000.00). If your total bid is Twenty-Five Thousand Dollars (\$25,000.00) or more, you **must** complete this form as directed below.

**Failure to complete and return this document with this bid will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis. Please read the certification appearing below on this form.**

- [ ] If all the goods or products specified in the attached bid which the bidder proposes to supply to the State shall be manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left.
- [ ] If only one item of any particular goods or products specified in the attached bid is manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left and list the items (or item number) here:
- \_\_\_\_\_
- \_\_\_\_\_
- [ ] If any or all of the goods or products specified in the attached bid which the bidder proposes to supply to the State are **not** manufactured or produced in the "United States" as defined in Section 34.350, RsMO, then: (a) check the box at left; (b) list below, by item (or item number), the country other than the United States where each good or product is manufactured or produced; and (c) check the boxes to the left of the paragraphs below if applicable and list the corresponding items (or item numbers) in the spaces provided.

Item (or item number)	Location Where Item Manufactured or Produced

(attach an additional sheet if necessary)

- [ ] The following specified goods or products cannot be manufactured or produced in the United States in sufficient quantities or in time to meet the contract specifications. Items (or item numbers): \_\_\_\_\_
- \_\_\_\_\_
- [ ] The following specified goods or products must be treated as manufactured or produced in the United States, in accordance with an existing treaty, law, agreement, or regulation of the United States, including a treaty between the United States and any foreign country regarding export-import restrictions or international trade. Items (or item numbers): \_\_\_\_\_
- \_\_\_\_\_

### CERTIFICATION

**By submitting this document, completed as directed above, with a bid, the bidder certifies under penalty of making false declaration (Section 575.060, RsMO) that the information contained in this document is true, correct and complete, and may be relied upon by the State in determining the bidders qualifications under and in compliance with the Missouri Domestic Products Procurement Act.**

**The bidder's failure to complete and return this document with the bid as directed above will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis pursuant to Section 34.353.3(2), RsMO.**

# PREFERENCE IN PURCHASING PRODUCTS

DATE: \_\_\_\_\_

The bidders attention is directed to Section 34.076 RsMO 1986 which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products.

Bids/Quotations received will be evaluated on the basis of this legislation.

**All vendors submitting a bid/quotation must furnish ALL information requested below.**

## FOR CORPORATIONS:

State in which incorporated: \_\_\_\_\_

## FOR OTHERS:

State of domicile: \_\_\_\_\_

## FOR ALL VENDORS:

List address of Missouri offices or places of business:

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## THIS SECTION MUST BE COMPLETED AND SIGNED:

**FIRM NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**BY (signature required):** \_\_\_\_\_

**Federal Tax I.D. #:** \_\_\_\_\_ **if no Federal Tax I.D. # - list Social Security #:** \_\_\_\_\_

NOTE: For bid/quotation to be considered, the "Preference in Purchasing Products" form must be on file in the General Services (Procurement) Division and must be dated in the current calendar year.

## VENDOR NOTES

VENDORS MAY ALSO ATTACH OTHER PERTINENT OR SUPPORTING DATA WITH THEIR RESPONSE TO THIS RFB.

**Missouri Department of Transportation purchase orders must be issued to the invoicing company/address. If the invoicing company/address will be different from that listed in the vendor information section (below), the vendor should specify the “remit to” company/address in the vendor notes section (above).**

## VENDOR INFORMATION

Vendor Name/Mailing Address:	Vendor Contact Information (including area codes):						
	Phone #:						
	Cellular #:						
Email Address:	Fax #:						
Printed Name and Title of Responsible Officer or Employee:	Signature:						
<p>Is your company registered/certified with the State of Missouri as a (please circle):</p> <table style="width: 100%; margin-left: 200px;"> <tr> <td style="text-align: right;">MINORITY BUSINESS ENTERPRISE (MBE) ?</td> <td style="text-align: center;">YES</td> <td style="text-align: center;">NO</td> </tr> <tr> <td style="text-align: right;">WOMEN BUSINESS ENTERPRISE (WBE) ?</td> <td style="text-align: center;">YES</td> <td style="text-align: center;">NO</td> </tr> </table> <p>If you would like information about MBE/WBE certification, please contact the Officer of Supplier of Workforce Diversity by calling 1-877-259-2963 or visit the following internet address: <a href="http://www.oswd.mo.gov">http://www.oswd.mo.gov</a></p>		MINORITY BUSINESS ENTERPRISE (MBE) ?	YES	NO	WOMEN BUSINESS ENTERPRISE (WBE) ?	YES	NO
MINORITY BUSINESS ENTERPRISE (MBE) ?	YES	NO					
WOMEN BUSINESS ENTERPRISE (WBE) ?	YES	NO					
<p>Is your company a MISSOURI SERVICE-DISABLED VETERAN BUSINESS? <span style="float: right;">YES      NO</span></p> <p>A service-disabled veteran is defined as any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veteran's affairs. A service-disabled veteran business is defined as a business concern:</p> <ul style="list-style-type: none"> <li>not less than fifty-one (51) percent of which is owned by one or more service-disabled veterans or, in the case of publicly owned businesses, not less than fifty-one (51) percent of the stock of which is owned by one or more service-disabled veterans; and</li> <li>the management and daily business operations of which are controlled by one or more service-disabled veterans.</li> </ul>							

**All responses to this Request For Bid should be submitted on this form and should be returned to the Buyer listed above at the District mailing address shown. Bids should be mailed or hand-delivered. Responses by fax cannot be accepted or considered for award.**

**Note: If any of the “Standard Solicitation Provisions” and “General Terms and Conditions” on the following pages conflict with the requirements outlined in this Request For Bid, the RFB requirements will supersede those below.**

## **STANDARD SOLICITATION PROVISIONS**

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.
- b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Offeror and must be adhered to. If time varies on different items, the Bidder/Offeror shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Offeror will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more**, no bids/proposals by telephone, telegram or telefax will be accepted.
- g. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

## **GENERAL TERMS AND CONDITIONS**

### **General Performance**

- a. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Contractor agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Contractor in performance of the work.

### **Deliveries**

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.
- b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

### **Nondiscrimination**

- a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
  - 1) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
    - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
    - ii. cancellation, termination or suspension of the contract, in whole or in part.

### **Contract/Purchase Order**

- a. By submitting a bid/quote/proposal, the Bidder/Offeror agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order or post-award contract.



- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

### **Subcontracting**

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

### **Invoicing and Payment**

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Project Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request if applicable.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.
- e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

### **Applicable Laws and Regulations**

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
  - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

### **Executive Order**

- a. The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6<sup>th</sup>) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.
  - 1) "By signing this Agreement, the Contractor hereby certifies that any employee of the Contractor assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law."

- 2) In the event the Contractor fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.
- 3) The Contractor shall include the provisions of this paragraph in every subcontract. The Contractor shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

#### **Preferences**

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
  - 1) If attached, the document entitled **"PREFERENCE IN PURCHASING PRODUCTS"** should be completed and returned with the solicitation documents.
  - 2) If attached, the document entitled **"MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT"** should be completed and returned with the solicitation documents. **Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more.**
- c. By virtue of statutory authority, RSMo 34.074, a preference will be given all contracts for the performance of any job or service to service-disabled veteran business either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable.
  - 1) If attached, the document entitled **"MISSOURI SERVICE-DISABLED VETERAN PREFERENCE"** should be completed and returned with the solicitation documents.
- d. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

#### **Remedies and Rights**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **Cancellation of Contract**

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.
- b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

#### **Bankruptcy or Insolvency**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

### **Inventions, Patents, and Copyrights**

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

### **Inspection and Acceptance**

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

### **Warranty**

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

### **Status of Independent Contractor**

- a. The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

### **Indemnification**

- a. The Offeror shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Offeror's performance of its obligations under this Agreement.

# THANK YOU

## DATE: \_\_\_\_\_

FROM: \_\_\_\_\_ (Company Name)

\_\_\_\_\_ (Contact Person)

\_\_\_\_\_ (Mailing Address)

\_\_\_\_ (City, State, Zip Code)

\_\_\_\_ (Office Phone #)

\_\_\_\_ (Cellular Phone #)

\_\_\_\_\_(Fax #)

\_\_\_\_\_ (Email Address)

( ) Product or service is not available or cannot meet the required specifications

( ) Other obligations – cannot make required deadline

( ) The delivery point or work location is outside of our territory or coverage/service area

( ) Other – Please explain below:

( ) Please keep our name on the bidder's list for future opportunities on this product or service.

( ) Please remove our name from your bidder's list for this product or service.

PAGE 12 OF 12